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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,788	07/30/2003	Jean Taylor	0573-1004-1	9395

466 7590 02/20/2007
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EXAMINER

PHILOGENE, PEDRO

ART UNIT	PAPER NUMBER
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3733

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/629,788

Applicant(s)

TAYLOR ET AL.

Examiner

Pedro Philogene

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-13, 16-20, 23, 24 and 26-30 is/are allowed.
- 6) ☒ Claim(s) 14, 15, 21, 22, 25, 31-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/8/06 has been entered.

Claim Objections

Claims 1-33 are objected to because of the following informalities: applicant must provide a set of all the claims, including original, amended, and new, for examination. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14,15,21,22,25,31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernhardt et al. (5,591,166) in view of Rhinevailt (2,190,585).

With respect to claims 14, 31 Bernhardt et al disclose a spinal osteosynthesis device comprising at least two bone anchoring elements (20) for anchoring in respective bodies of the bone structure of the spine, at least one member (62) for longitudinal connecting the bone anchoring elements ad shakles (64,68) for connecting the bone

anchoring elements together, each bone anchoring element comprises a head (36) a threaded shank (28) extending the head and a tightening element (70) which can be fitted onto this shank, the threaded shank has a ball end (22) for articulation in a housing (44) of a spherical cup (46) of the head (36), the ball and the cup have respective center of rotations which are separated by a distance; as best seen in FIGs.3,4, giving the device a function of returning the bone anchoring element by transverse force, the connector shank for this purpose having a spherical bearing surface, as best seen in FIG.2, articulated to a portion of the spherical bearing surface of the cup of the head of the bone anchoring element.

It is noted that Bernhardt et al did not teach of a recess having an interior surface and a ball having an exterior surface defining a wall that tapers as it approaches the opening; as claimed by applicant. However, in a similar art, Rhinevault evidences the use of a ball and socket or recess having wall that tapers as it approaches the opening so that the head may adjust itself into proper contact with the threaded shank.

Therefore, given the teaching of Rhinevault, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Bernhardt et al, as taught by Rhinevault et al, so that the head may adjust itself into proper contact with the threaded shank.

With respect to claims 15,21,22,25, 32,33 Bernhardt et al disclose all the limitations, as set forth in column 3, lines 35-67, column 4, lines 1-67, column 5, lines 1-30, and as best seen in FIGS.1-7; also as best seen in FIG.2,3 of Rhinevault.

Allowable Subject Matter

Claims 1-13,16-20,23,24,26-30 are allowed.

Response to Amendment

Applicant's arguments, see Remarks, filed 2/8/06, with respect to the rejection(s) of claim(s) 14,15,21,22,25,31-33 under 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Rhinevault.

Conclusion

A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene
February 13, 2007


